

Service Date: June 28, 1991

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Complaint of F.)	UTILITY DIVISION
Lee Tavenner.)	DOCKET NO. 90.8.51
)	ORDER NO. 5506b
_____)	

ORDER ON MOTION FOR RECONSIDERATION

Background and Purpose

1. The Commission issued Order No. 5506a on January 9, 1991, in the matter of the BGI/MPC petition, Docket No. 90.8.51. Two other dockets were combined with the BGI/MPC petition including the 1990 avoided cost compliance filing out of Commission Docket No. 84.10.64 (Order No. 5091c) and Mr. Lee Tavenner's (hereafter Tavenner) December 19, 1989, complaint (Docket No. 89.12.57) in the matter of MPC's 1989 avoided cost compliance filing (Docket No. 84.10.64). Due to an amendment to this complaint, MPC's 1988 avoided energy costs and prices are also at issue. On January 22, 1991, Tavenner filed a Motion For Reconsideration of Order No. 5506a. Tavenner's complaint is the only matter under reconsideration in this Order. The BGI/MPC petition and the 1990 Avoided Cost compliance filing were addressed in Order No. 5506a and no party requested reconsideration of those matters.

Summary: Commission's Decisions

2. The issues raised in Tavenner's motion are complex. They involve orders from past avoided cost dockets, orders issued in Docket No. 88.6.15 (Colstrip 4), as well as Order No. 5506a. Tavenner's motion requires technical analysis and policy decisions by the Commission.

3. For the reasons discussed below the Commission rejects

certain parts of Tavenner's motion and accepts others. Tavenner's motion with regard to contract year 1988 is accepted, but his motion regarding contract year 1989 is rejected. The Commission will also decide certain other issues.

4. Commission approval of annual avoided cost compliance filings involves a review for compliance with approved methodologies. Implicit in any compliance filing approval is an approval of the underlying resources for the purpose of computing tariffed avoided cost prices. Load and resource balances change each year. An analysis of Tavenner's motion also requires a review of resource assumptions in MPC's load and resource plans.

Substance of Tavenner's Order No. 5506a Motion

5. Tavenner's motion requests the Commission to reconsider the appropriate calculation for energy option B (EOB) avoided cost (AC) prices in MPC's 1988 and 1989 tariffs. To restate, Tavenner's motion involves EOB AC prices and not capacity prices. Tavenner has a long-term levelized contract for capacity with MPC, but selected the year-by-year forecast of energy prices, EOB.

6. As background, a statement at page four of Tavenner's direct testimony raises, what appears, a critical assumption underlying Tavenner's motion:

In 1988 and 1989 Montana Power filed avoided cost rates that included incorrect values for the Option B energy rate. Because Montana Power intended and actively pursued the purchase of power in 1988 and 1989, the BPA price is the appropriate avoided cost for Option B energy in both years. The 1988 and 1989 Option B rates should not be approved by this Commission until they have been changed to the BPA price. (Emphasis added.)

7. Tavenner makes four requests in his motion. His first request regards the 1988 Order No. 5091c AC compliance filing. He requests the Commission approve MPC's initial 1988 LTQF-1a filing made in July, 1988. Tavenner contends that the 1988 EOB prices should equal the BPA rate because the 1988 forecast included a long-term purchase and MPC chose BPA as the proxy value for a long-term purchase in 1988. He advises rejecting all other filings to avoid retroactive ratemaking adjustments. Thus,

he argues that the Commission should reject MPC's January, 1990 revision to its initial July, 1988 filing.

8. Tavenner's second request regards the 1989 Order No. 5091c AC compliance filing. Since the time of his Motion for Reconsideration of Order No. 5360d, Tavenner has proposed two different EOB prices for year 1989. In his motion on Order No. 5360d he proposed winter and summer prices of 2.55c/kwh and 2.24c/kwh. In his Order No. 5506a motion he cites MPC workpapers for EOB prices which equal those cited above from his Order No. 5360d motion. However, the cited MPC workpapers include costs that do not equal those discussed at page 24 of Tavenner's Motion for Reconsideration of Order No. 5506a, wherein he appears to recommend that the same EOB prices in MPC's July 1988 LTQF-1a filing be used for the 1989 contract year. Thus, he advises rejecting MPC's initial 1989 (filed September, 1989) and revised 1989 (January, 1990) EOB prices, in favor of those which MPC filed in July, 1988 under the LTQF-1a tariff.

9. A third request asks the Commission to reject MPC's payments to Tavenner for contract years 1988 and 1989 for not complying with Order No. 5091c.

10. Tavenner appears to raise a new issue at page 20 of his motion. This issue involves what year's costs should be the basis for calculating a contract year's avoided costs. One interpretation of this part of Tavenner's motion is that when MPC makes an AC filing in June (e.g., 1988) for the subsequent contract year beginning July 1 (1988) and running through June 30 (1989), ACs should be based on the time period June 1, 1989 through June 30, 1990.

COMMISSION'S DECISION

11. The findings below are organized as follows: First, to dismiss the last request, the following addresses that part of Tavenner's motion dealing with the relevant contract year. This issue is followed by an analysis of the remaining issues in the order just discussed.

I. Contract Year

12. The issue involving Tavenner's last request regards the

costs to include in a contract year's AC rates. If Tavenner's Motion suggests the costs included in a contract year's AC rates should lag the contract year by one year, the motion is denied. A contract year's avoided costs must reflect the same year's costs and not costs lagged one year.

II. 1988 EOB Avoided Costs

13. MPC filed two AC tariffs in June of 1988 and sought approval of both. One of these tariffs, the LTQF-1a, reflects loads and resources before Colstrip 4's addition. The LTQF-1a EOB prices, are those which Tavenner holds should replace actual MPC payments in contract year 1988. However, MPC revised its initial LTQF-1a EOB ACs in January 1990. The revised rates were changed to reflect MPC's alleged transposition error and Order Nos. 5360d and 5360e.

14. The various EOB ACs follow:

	1988/1989	
	Winter	Summer
1. July 1988 filing (Tavenner's proposal)	2.7617c/kwh	2.666c/kwh
2. January 1990 revision (MPC's proposal)	2.1406c/kwh	1.6224c/kwh
3. Rates actually paid Tavenner (estimated assuming 4% inflation)	2.0c/kwh	1.52c/kwh

15. A Commission decision on this aspect of Tavenner's motion involves Commission's decisions in prior avoided cost dockets and Docket No. 88.6.15 (the Colstrip 4 docket), as well as the record in the present Docket.

16. While Tavenner's argument is not entirely correct, it indirectly points to the selectivity in MPC's admitted transposition error. MPC's selectivity, in turn, reveals a confused understanding, on MPC's part, of Order No. 5091c. These matters are addressed below.

17. First, at the first six lines on page 20 of his Order No. 5506a motion, Tavenner confuses costs and prices. The Commission addressed this confusion at Finding of Fact (FOF) Nos. 61 and 62 of Order No. 5506a. In short, while the costs

underlying EOB and EOC should be the same for a given year, the prices for EOB and EOC will not likely be the same, as Tavenner suggests. Second, when MPC admitted a transposition error in the July 1988 LTQF-1a EOB price, MPC either made an additional transposition error, which it selectively decided not to correct, or chose to inconsistently use costs in developing EOB and EOC in the LTQF-1a prices. To explain this point one must reach back to motions and responses to motions on Order No. 5360d in the October 1989 time frame.

18. On October 12, 1989, MPC filed a Response to the parties' (including Tavenner's) motions for reconsideration of Order No. 5360d. In this response, MPC admitted a transposition error. MPC stated this error was just to EOB in the 1988 LTQF-1a tariff. Because MPC limited its admission of this error to just EOB, when it could have also admitted that this error equally applied to energy option C (EOC), MPC implicitly held that the associated BPA NR costs were relevant when computing EOC. If the BPA NR costs are relevant in the first year for EOC, they are equally relevant in the first year of EOB. This is precisely what FOF Nos. 61 and 62 of Order No. 5506a stated. MPC opted not to seek reconsideration on these findings. Thus, if MPC holds it made a transposition error with EOB, but not with EOC, MPC's interpretation of costs from Order No. 5091c is also confused.

19. MPC's confusion with Order No. 5091c is now addressed. These findings address what costs go into each of the three energy options tariffed out of Order No. 5091c (EOA, EOB and EOC). In Order No. 5091c the Commission stated that each of these three options must be computed based on running costs (system lambda). System lambda is the highest avoidable cost in the merit order dispatch for a defined time period (see the Glossary in Order No. 5017, out of the Commission's second avoided cost Docket No. 83.1.2). The Commission also stated in Order No. 5091c that running costs, for all three energy options, must be adjusted to reflect other costs, two of which include purchased power and off-system opportunity sales (see FOF 260-262, Order No. 5091c).

20. For whatever reason, in October, 1989 MPC chose to selectively cite a finding of fact in Order No. 5091c when it

responded to Tavenner's motion on Order No. 5360d. At page nine of its Response MPC clearly misrepresents the Commission's Order No. 5091c when it responded to Tavenner's motion. The Commission denied Tavenner's Motion to Strike MPC's misrepresentation of facts when it issued Order No. 5360e on Tavenner's motions (FOF No. 36). That decision is corrected in the present Order.

21. While the above is sufficient reasoning to require MPC to pay Tavenner the EOB prices in its July, 1988 LTQF-1a tariff, the argument is reinforced by looking at findings of fact in Docket No. 88.6.15 and MPC's load and resource plans for 1988. Order No. 5360d (FOF 360) required MPC to continue using BPA's NR-87 as proxy for the cost of unspecified resources in its Load and Resource plans and in any compliance filing impacted by the Order. One such compliance filing is MPC's 1988 Order No. 5091c compliance filing made as a result of the Commission's consolidation of dockets. In Order No. 5360e, the Commission reaffirmed the role BPA's NR-87 would have when it denied DNRC's motion to replace BPA with a Salem based resource (FOF Nos. 19 and 20).

22. To set the 1988 rates at MPC's initial July, 1988 levels, the Commission would need to conclude that MPC needed BPA NR power in July, 1988. MPC's June, 1988 Projection of Electric Loads and Resources (page 40) shows an energy (average MW) deficiency for contract years 1987 and 1988, if you exclude Colstrip 4. (Tr. 101, Docket No. 90.8.51)

23. For all of the above reasons the Commission grants Tavenner's motion to base the 1988 EOB energy prices on MPC's July 1988 LTQF-1a tariff rates, uncorrected for any alleged transposition error.

III. 1989 EOB Avoided Costs

24. MPC filed its initial 1989 AC tariff in September of the same year. The initial ACs were later revised to reflect Order Nos. 5360d, 5360e and Commission Staff correspondence reflecting a Commission decision on seasonal cost allocations. The various EOB ACs follow:

1989/1990

Winter

Summer

1. July 1988 filing (Tavenner's proposal)	2.7617c/kwh	2.666c/kwh
2. September 1989 filing	1.8759c/kwh	1.651c/kwh
3. October 1989 revised	1.8754c/kwh	1.6505c/kwh
4. January 1990 revision (MPC's proposal)	2.0294914c/kwh	1.5381c/kwh
5. Rates actually paid Tavenner (estimated assuming 4% inflation)	2.08c/kwh	1.58c/kwh

25. The following findings provide two reasons for denying Tavenner's motion to base 1989 avoided costs on MPC's 1988 LTQF-1a EOB prices. Both reasons stem from an argument in Tavenner's motion. Tavenner's argument is critical to a decision on the appropriate 1989 EOB price. The relevant background includes part five (5) beginning on page 22 and running through page 24 of Tavenner's motion. On page 24, beginning with the first full paragraph, Tavenner holds that because MPC included a BPA purchase in 1989 for capacity ACs, MPC should have included the same resource (BPA) on the energy side. For two reasons this is incorrect.

26. First, Tavenner holds no evidence was ever offered to refute the assertion that in June of 1989 MPC needed additional energy (motion, page 15). This point of Tavenner's relates to a statement in his direct testimony in Docket No. 90.8.51, page 4 quoted above: "Because Montana Power intended and actively pursued the purchase of power in 1988 and 1989, the BPA price is the appropriate avoided cost for Option B energy in both years."

27. A review of MPC's June 1989 Projection of Electric Loads and Resources reveals different "base-case" forecasts of energy and capacity load and resource balances (pages 49 and 50). In year 1989/1990 MPC is deficient in capacity but sufficient in energy, even after excluding Colstrip 4 as a resource.

28. A review of MPC's Order No. 5360d Colstrip 4 base-case compliance filing shows no qualitative change in the above energy and capacity load and resource balances. That is, MPC remains capacity deficient and energy sufficient in contract year 1989, the period on which EOB costs and prices are developed. Note that the Colstrip 4 filing reflects the Commission's Order No.

5360d load and resource decisions.

29. Thus, when one contrasts the Commission's ordering paragraphs in Order Nos. 5360d, and 5360e with MPC's forecasts for contract year 1989, there appears no evidence that MPC needed to purchase additional energy during year 1989. (See Order No. 5360d, FOF 360, which required MPC to continue using BPA's NR-87 as proxy for the cost of unspecified resources in its load and resource plans in any compliance filing impacted by the Order, and Order No 5360e, FOF Nos. 19 and 20 which reaffirmed this finding.)

30. Second, the Commission finds noteworthy Tavenner's concession of a finding in Order No. 5091c methodology. However, Tavenner's concession is inconsistent with his argument to base 1989 EOB ACs on the July 1988 LTQF-1a tariff. Page 11 (first 13 lines), of Tavenner's motion concedes that purchases are not necessarily a component of avoided costs. Then, at page 14 (last 3 lines) of his motion Tavenner states Order No. 5091c established the proper methodology. But, a review of MPC's 1986 Order No. 5091c compliance filing reveals MPC excluded BPA rates in EOB while including BPA rates to compute capacity ACs for the same year. In 1986 no party, including Tavenner, contested this choice of resources and the resulting AC prices. Now, in this motion, Tavenner contests precisely the same load and resource balance relation.

31. As an aside, a statement at page 22 of Tavenner's motion is incorrect. Tavenner states that EOB values were based on system lambda alone in 1989. A review of MPC's September (initial), October (revised) and January 1990 (revised) filings all indicate MPC included off-system opportunity sales to adjust system lambda (workpapers page 16 and 16b of 33). Thus, EOB values were not based on system lambda alone, as Tavenner contends.

IV. Reject Actual 1988 and 1989 Payments

32. The next aspect of Tavenner's Motion involves the payments MPC made to him during the two contract years. Tavenner requests all such adjusted payments be rejected. The Commission agrees with Tavenner that the EOB payment adjustments MPC devised

in years 1988 and 1989 have no foundation in Order No. 5091c. MPC is hereby required to compute the revenues Tavenner would have received given the Commission's decisions in this Order and make a one-time payment adjusting the total revenues actually received by Tavenner for the 1988 and 1989 contract years.

V. Point of Clarification

33. In analyzing Tavenner's motion and related documents the Commission finds merit in clarifying one concept. With respect to the contract year definition, the Commission's Cogeneration and Small Power Production Rules (ARM 38.5.1905) require AC filings each June 1. The contract year concept was initially addressed in Order 4865 (FOF 36), and then in Order 5017 (page 54) which reads in part: "Such rate shall be updated each June 1 for the subsequent contract year." Docket No. 84.10.64, Order No. 5091c tariffs define "contract year" to mean a twelve-month period beginning on July 1 of any year. The Commission defined the contract year concept in Order No. 5360e (FOF 33 and 34) to be as commonly understood.

CONCLUSIONS OF LAW

1. The Montana Power Company is a public utility within the meaning of Montana law, Sections 69-3-101 and 69-3-601(3), MCA.

2. The Commission properly exercises jurisdiction over the rates, terms, and conditions for the purchase of electricity by public utilities from qualified cogenerators and small power producers. Section 69-3-102, 69-3-103 and 69-3-104, MCA. Section 210, Pub. L. 97-617, 92 Stat. 3119 (1978).

3. The rates determined according to this Order are just and reasonable in that they were calculated consistent with Commission approved methodology and reflect MPC's avoided costs.

4. The Commission properly exercises jurisdiction over certain complaints against public utilities pursuant to 69-3-321, MCA.

ORDER

1. The requests of F. Lee Tavenner's motion are granted in

part and denied in part.

2. The Commission grants that part of Tavenner's Motion which proposes to base 1988 Energy Option B prices on MPC's LTQF-1a tariffed rates, uncorrected for any transposition error.

3. The Commission denies that part of Tavenner's Motion which proposes to base contract year 1989 Energy Option B prices on MPC's LTQF-1a EOB prices.

4. MPC is directed to comply with paragraph 32 of this Order.

DONE AND DATED in open session at Helena, Montana the 21st day of June, 1991 by a 4 - 0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.